IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.897of 2005

Date of decision 24.5.2007

State of H.P. and others Petitioners

Vs.

Shamsher Singh and another Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1] No.

For the Petitioners: Mr.M.S.Chandel, Advocate General, with, Mr.M.A.Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.

For the Respondents : Mr.K.D.Sood, Advocate, for respondent No.1.

Rajiv Sharma, J.

This petition is directed against the Award dated 3.6.2005 passed by learned Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala camp at Una in Reference No.351/2003(RBT No.182/04).

The appropriate Government has made the following reference for adjudication to the Labour Court :

"Whether the action of Executive Engineer, I&PH Division No.1, Una District Una, not allowing Sh.Shamsher Singh son of Sh.Jathu Ram daily waged chowkidar to join his duties on 23.10.1997 after his illness on the production of medical fitness certificate is fair and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to?"

In sequel to the reference by the appropriate Government as quoted above, the respondent hereinafter referred to as the workman for convenience, had filed a statement of claim stating therein that he had joined the Department as Beldar with effect from 1.6.1985 upto 23.4.1993.

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

The further case set out by the workman before the Labour Curt was that he reported for duty after recovering from illness before the J.E. with fitness certificate on 23.10.1997.

The workman raised demand and after the failure report the matter was referred by the appropriate Government to the Labour Court-cum-Industrial Tribunal. The learned Presiding Judge, Labour Court held the action of the employer of not permitting the workman to join the duties with effect from 23.10.1997 unfair and unjustified and directed the re-engagement of the workman as daily waged Chowkidar. The learned Labour Court had also held the workman entitled to back wages to the extent of 60% from 23.10.1997 onwards but was not held entitled for any back wages for the period with effect from 23.4.1993 to 23.10.1997. The workman had worked for 183 days with effect from 1.6.1986 to 31.12.1986, worked for 365 days in the year 1987, 273 days in the year 1988, 365 days in the year 1989, 365 days in the year 1990,365 days in the year 1991, 364 days in the year 1992 and during the year 1993 i.e. from January to April, 1993 the workman had worked for 31,28,31 and 22 days, respectively.

The main case set up by the workman before the labour Court was that he fell ill in the year 1993 and after his recovery he approached the concerned authorities with medical slips. The plea taken by the employer before the Labour Court was that it was a case of abandonment. The employer had also examined one Sh.Ram Ratta, J.E. (RW-1) and Sh.Krishan Kumar, Pump Operator (RW-2) to substantiate the plea of abandonment. Both the witnesses could not support the plea of abandonment. The learned Labour Court has gone into length while considering the true import of Section 25-B of the Industrial Disputes Act, 1947 while coming to the conclusion that the workman had been wrongly not permitted to join his duties after recovering from his illness. The learned Labour Court has given finding that cessation of the workman was

not due to his fault and it was only due to illness. Though the findings recorded by the Labour Court with regard to the fact that the action of the employer was unfair and unjustified in not permitting the workman to join his duties is upheld but the relief of back wages granted to the workman with effect from 23.10.1997 is not sustainable in the eye of law. Accordingly the Award dated 3.6.2005 is modified to the extent that the workman will be held entitled to re-engagement but without back wages.

May 24, 2007(g) **(Rajiv Sharma), J.**